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8 Attorneys for Defendants  
9 COUNTY OF SAN BENITO also sued herein as  
10 COUNTY OF SAN BENITO SHERIFF'S  
11 DEPARTMENT and SHERIFF CURTIS J. HILL

12 IVONNE GUERRERO, individually ) Case No. C08 00307 PVT  
13 and as Guardian ad Litem for: )  
14 JESUS I. GUERRERO, a Minor ) **JOINT CASE MANAGEMENT**  
15 Child; LUIS GUERRERO, a Minor ) **CONFERENCE STATEMENT**  
16 Child; ICELLA M. GUERRERO, a )  
17 Minor Child; )  
18 Plaintiffs, )  
19 vs. )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
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28 )

Date: May 6, 2008  
Time: 2:00 p.m.  
Dept.: Courtroom 5, 4<sup>th</sup> Floor  
Judge: Patricia V. Trumbull

22 The parties to the above-entitled action jointly submit this Case Management  
23 Statement and Proposed Order and request the Court adopt it as its Case Management  
24 Order.

25 1. **Jurisdiction and Service:**

26 This court has jurisdiction over this matter pursuant to 42 USC § 1983 for alleged  
27 violations of due process under the 4<sup>th</sup> and 14<sup>th</sup> Amendments of the United States  
28 Constitution.

1 Defendants acknowledge jurisdiction of the United States District Court over this  
2 matter. Venue is not disputed.

3 All defendants have been served and answered plaintiffs' complaint.

4 **2. Facts:**

5 This is a survival and wrongful death action brought by the wife and three minor  
6 children of decedent Israel Guerrero. Mr. Guerrero died at Hazel Hawkins Memorial  
7 Hospital on June 10, 2007, after a confrontation with San Benito County Sheriff's Deputy  
8 Michael Rodrigues and other law enforcement officers. Guerrero was unarmed at the  
9 time of the incident which occurred along Highway 156, a two lane highway in San Juan  
10 Bautista. Deputy Rodrigues was on patrol with his daughter in his patrol vehicle when he  
11 came upon two vehicles on the side of the road. One of the vehicles drove away soon  
12 after Deputy Rodrigues' arrival. Deputy Rodrigues exited his vehicle and approached Mr.  
13 Guerrero who was standing behind his vehicle tossing items out from his trunk onto the  
14 ground. Mr. Guerrero was unresponsive to Deputy Rodrigues' inquiries about whether  
15 there had been an accident and if Mr. Guerrero was okay. Further attempts to  
16 communicate were unsuccessful and Deputy Rodrigues suspected Mr. Guerrero was  
17 possibly under the influence of a controlled substance. When Mr. Guerrero was not  
18 responding to Deputy Rodrigues' commands, he was tased once by Deputy Rodrigues  
19 and struck with a collapsible baton. At Deputy Rodrigues' instruction, Deputy Penney also  
20 tased Mr. Guerrero. When he continued to quickly advance on Deputy Rodrigues, Deputy  
21 Rodrigues drew his gun and ordered Mr. Guerrero to the ground. Mr. Guerrero continued  
22 towards Deputy Rodrigues and when he was within a few feet of him, Deputy Rodrigues  
23 fired one bullet from his gun striking Mr. Guerrero in his stomach. Ultimately, Mr. Guerrero  
24 was transported by ambulance to Hazel Hawkins Memorial Hospital. Blood drawn from  
25 Mr. Guerrero was positive for methamphetamine and cocaine.

26 Plaintiffs sue for wrongful death and allege federal civil rights claims and state claims  
27 for assault and battery and negligent training and/or supervision. There is also a survival  
28 action. Punitive damages are sought against the individual defendants. Plaintiffs also

1 seek attorney fees under 42 USC § 1988.

2                   **Factual Issues in Dispute:**

3                   At this point, factual issues include:

4                   (a)    Whether decedent was aggressive and confrontational towards law  
5 enforcement;

6                   (b)    Whether defendants' actions were reasonable;

7                   (c)    Whether defendants' use of force and escalation of force were  
8 reasonable;

9                   (d)    Whether defendant SAN BENITO COUNTY knowingly maintained an  
10 official policy of permitting the types of wrongs alleged by plaintiff through deliberate  
11 indifference base on the principle set forth in Monell v. New York City Department of  
12 Social Services, 436 U.S. 658, 691, 98 S.Ct. 2018 (1978).

13                   (e)    The nature and extent of damages.

14                   **3. Legal Issues:**

15                   (a)    Whether decedent's civil rights were violated;

16                   (b)    Whether plaintiffs' civil rights were violated;

17                   (c)    The application of any immunities afforded defendants under state  
18 and/or federal law.

19                   **4. Motions:**

20                   No motions are pending. Defendants anticipate the possibility of a summary  
21 judgment motion depending upon the facts/evidence developed in discovery. It is  
22 anticipated this motion would not be filed until discovery is completed.

23                   **5. Amendment of Pleadings:**

24                   Plaintiffs do not presently anticipate amending their complaint.

25                   **6. Evidence Preservation:**

26                   There are no issues at this time with respect to evidence preservation.

27                   **7. Disclosures:**

28                   The parties will have timely submitted their FRCP 26 disclosures. The parties have

1 identified all persons involved in the subject incident, witnesses and documents.

2       **8.     Discovery:**

3           No discovery has been taken to date.

4           The parties suggest the following discovery plan:

5           Depositions (excluding experts) – 25 per side;

6           Interrogatories – 40 to each party;

7           Request for Production – per Rules;

8           Request for Admissions – per Rules.

9           The parties may offer expert testimony as to the following subject matters:

10           Police procedures, toxicology, causation and damages.

11        **9.     Class Actions:** Not applicable.

12        **10.    Related Cases:** None.

13        **11.    Relief:**

14           Plaintiff's seek economic and non-economic damages of between \$3 million and \$11  
15 million.

16        **12.    Settlement and ADR:**

17           The parties have stipulated to Early Neutral Evaluation. The Early Neutral Evaluator  
18 is Randolph W. Hall. The ENE has not been set up. Defendants suggest that the ENE be  
19 held sooner rather than later and that discovery remains frozen until after the ENE.

20        **13.    Consent to Magistrate Judge For All Purposes:**

21           Defendants have consented to have Magistrate Trumbull conduct all further  
22 proceedings including trial and entry of judgment. Plaintiffs are still considering whether to  
23 consent.

24        **14.    Other References:**

25           Not applicable at this time.

26        **15.    Narrowing of Issues:**

27           Not applicable at this time.

28

1       **16. Expedited Schedule:**

2       Not applicable at this time.

3       **17. Scheduling:**

4       Fact discovery to be completed by \_\_\_\_\_.

5       On or before \_\_\_\_\_, the parties shall disclose experts pursuant to

6       FRCP 26. Rebuttal expert disclosure will be \_\_\_\_\_.

7       Expert witness discovery shall be completed by \_\_\_\_\_.

8       The Court orders the following additional limitations on the subject matter of  
9       discovery:

10      The discovery motion hearing cutoff date is \_\_\_\_\_.

11      Dispositive motions will be heard by \_\_\_\_\_.

12      A Pretrial Conference will be heard on \_\_\_\_\_. The parties request  
13      a \_\_\_\_\_ trial date.

14       **18. Trial:**

15      Plaintiffs and defendants demand a jury trial. Trial is expected to last no more than  
16      ten court days.

17       **19. Disclosure of Non-Party Interested Entities or Persons:**

18      Not applicable.

20      Dated: April 29, 2008

21      By: /s/ Michael C. Serverian

22                   MICHAEL C. SERVERIAN  
23                   Attorney for Defendants  
24                   COUNTY OF SAN BENITO also sued  
25                   herein as COUNTY OF SAN BENITO  
26                   SHERIFF'S DEPARTMENT and  
27                   SHERIFF CURTIS J. HILL

25      Dated: April 29, 2008

27                   /s/ Michael D. Liberty

28                   Michael D. Liberty  
                         Attorney for Plaintiffs

1  
2 Dated: April 29, 2008  
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4

5 /s/ John L. Flegel  
6 John L. Flegel  
Attorney for Defendant  
Officer Michael Rodrigues  
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